Proskauer

SBA Expands COVID Disaster Loans

September 14, 2021

Effective September 8, 2021, the U.S. Small Business Administration ("SBA") significantly expanded the ability of small businesses to apply for low-interest loans through the revised COVID Economic Injury Disaster Loan ("EIDL") program. The program will end on December 31, 2021, or until funds are exhausted, whichever occurs sooner, suggesting that all applicants looking to apply should do so as soon as possible.

The COVID EIDL program is an "improved" version of the "regular" EIDL program that existed prior to (and will exist after) the pandemic. The purpose of the EIDL program is to help businesses meet operating expenses and financial obligations that would have been met had the pandemic not occurred. It is intended for businesses already in operation prior to the beginning of the pandemic.

Eligibility: An eligible business must meet the following criteria:

- Location of Business: The business must be located in the United States or a designated territory.
- Immigration Status of Owners:
  - For-profit businesses (other than sole proprietorships): The business must have a valid IRS-issued tax identification number and each owner, member, partner of shareholder of 20% or more of the business must be a U.S. citizen, a non-citizen national or a qualified alien with a valid social security number.
  - Sole proprietorships: U.S. citizen, a non-citizen national or a qualified alien with a valid social security number.
  - *Note: As drafted these requirements do not apply to not-for-profit entities.*
- Size of Business: COVID EIDL size standards have been revised to include the following:
  - A business that, together with its affiliates, has 500 or fewer employees.
  - A private nonprofit organization that has an effective ruling letter from the IRS under 501(c), (d) or (e) of the IRS Code, or satisfactory evidence from the

relevant State that it is a nonprofit organization under state law or it is a faith-based organization.

- A business that, together with affiliates, has more than 500 employees, if it:
  - falls within a list of industries identified by NAICS codes, which include educational services (61), arts, entertainment and recreation (71), accommodation and food services (72), support activities for mining (213), industry group (213), beverage manufacturers (3121), apparel manufacturing (315), clothing and clothing accessories stores (448), sporting good, hobby, book and music stores (451), air transportation (481), transit and ground passenger transportation (485), 487 scenic and sightseeing transportation, publishing industries (except internet) (511), motion picture and sound recording industries (512), broadcasting (except internet) (515), rental and leasing services (532), and personal and laundry services (812);
  - does not employ more than 500 employees per physical location; **and**
  - does not have more than 20 locations. The 20 location limit includes the number of locations the affiliates have, if any.

- Affiliate rules: An affiliate is any business in which an applicant business (i) owns at least 50%, (ii) has a right to at least 50% of profit distributions, or (iii) has the contractual authority to control the direction of the business. The affiliation is determined as of the agreements in existence as of January 31, 2020. *Note: As drafted this does not include parent entities only subsidiaries.*
- Credit Score: For-profit businesses need to have a minimum credit score which depends on the amount of loan requested. For loans of $500,000 or less, a minimum score of 570 is necessary. For loans greater than $500,000, a minimum score of 625 is necessary.
- Ineligible businesses include:
  - Businesses not in operation on or before January 31, 2020 (“in operation” includes businesses that were in organizational stages but had not yet opened for business).
  - Businesses in certain industries including a business that earns more than 1/3 of its gross annual revenue from gambling, a business engaged in multi-level sales distribution, lending, investment, or real estate development or investment (other than rental properties), most publicly owned nonprofit organizations, businesses whose owners had a past involving criminal activity, businesses that had revenue and did not file 2019 taxes and others. *Note: It*

is not clear exactly how the real estate provision exclusion applies as some of the industries specifically targeted to be supported by this program (and that are the beneficiaries of the exception to the 500 employees rule) may also involve real estate investment or development. We would expect this inconsistency to be explained as this program moves forward.

- Businesses that have filed for chapter 7 bankruptcy, are being liquidated under Chapter 11 and/or are permanently closed. *Note: Businesses that are operating under an approved reorganization plan under Chapters 5, 11, 12 or 13 are eligible.*
- If the business had a change of ownership above 50% since the start of the pandemic, the business is not eligible for the EIDL loan unless the change involved a close family member or partner, or the contract for sale existed prior to January 31, 2020.

- PPP: If the business had received a PPP loan, that alone does not disqualify the business from the program. The business may use EIDL funds to repay PPP loan (or other loans obtained from the government).

Terms of the EIDL loan:

- Loan Cap: The maximum loan amount has been raised from $500,000 to $2 million per business. The aggregate loan cap for entities within the same corporate group (defined based on majority ownership) has been raised to $10M. **Businesses that obtained prior EIDL loans may apply to increase their loan amount.**
- Interest: For for-profit businesses, the interest rate will be 3.75% over a 30-year fixed amortization period. For not-for-profits, the interest rate will be 2.75% over a 30-year fixed amortization period.
- Amortization: Payments are deferred for the first 24 months from the original loan closing date, during which payments shall accrue, and then principal and interest payments are to be made over the remainder of the loan. There are no pre-payment penalties or fees. Additionally, the credit-elsewhere requirement will be waived.
- Use of Funds: The EIDL loan can be used to fund working capital necessary to carry on the business and for expenditures necessary to alleviate the specific economic injury caused by the pandemic. This includes expenditures and debts such as working capital, prior business debts (for example, mortgages and credit card debts), payroll, the continuation of health care benefits, rent, maintenance, utilities, and fixed debt payments. EIDL loans cannot be used to expand the business. The EIDL loan can be used to fund the continuation of renovations, but not new

renovations to expand the business or to repay debts owed to a federal agency.

- Amount: The SBA will award the loan amount based on the following criteria.
  - If the requested loan amount is $500,000 or less: For applicants in operation before January 1, 2019, the lesser of (i) double the business' 2019 gross revenue *minus* the 2019 cost of goods or (ii) $500,000 (whichever is less). If the business was not in operation on January 1, 2019 the SBA will calculate the maximum loan amount.
  - If the requested loan amount is over $500,000: The SBA will underwrite the loan based on a cash flow analysis. The maximum loan amount is $2 million per business.
- Guarantee: A personal guarantee is required for all loans above $200,000 by all 20% or more owners and all general partners and managing members, regardless of ownership percentage. If no single owner owns more than 20%, at least one individual or entity must provide a full guaranty. No guarantee is required for nonprofit organizations or ESOPs.
- Collateral: No collateral is required for loans up to $25,000. For loans over $25,000, the SBA uses a general security agreement to secure collateral. The designated collateral consists of existing business assets, such as machinery, equipment, fixture, furniture, or similar property. Businesses do not need to find new collateral, and the collateral does not include real estate or personal collateral. The collateral will be subordinated to prior debt (including mortgages). For loans over $500,000 the SBA also requires a best available (i.e., subject to any existing mortgages in place) mortgage on real estate owned by the borrowing business.
- Forgivable: The EIDL loan is not forgivable, however, to the extent the borrower receives an EIDL Advance (which may be up to $15,000), that amount does not need to be repaid (although it may be deducted from any forgivable amounts under the PPP).
- Exclusivity Period and Timing: Starting September 8th, 2021, the SBA is accepting applications for loans both under and over $500,000. The SBA will begin approving loans greater than $500,000 on October 8, 2021. The SBA is expecting to review applications within three weeks for requests under $500,000 and within six weeks for requests over $500,000. For applicants planning to request less than $500,000 and then apply for a subsequent increase if approved for the initial request, the timeline is expected to be a total of about nine weeks, resulting from adding three weeks for the initial request and six weeks for the subsequent request.

How to Apply:

- Existing recipients: For existing recipients, the business should use the same sign-in to the portal. For businesses that have already submitted a Form 4506-T for a SBA loan or grant, the business must submit a new version of the Form 4506-T to apply for the revised EIDL loan program or for a loan increase. The recipient will then receive an email link, and can follow instructions from there.
- New applicants: To apply for the loan, business are required to submit a signed and dated Form 4506-T. This form authorizes the IRS to release business tax transcripts to the SBA to verify the business' revenue.

A link to the application can be found by clicking here. For more information, please see the SBA's official FAQs here.

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Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. We will continue to evaluate the American Rescue Plan Act, the CARES Act, the Consolidated Appropriations Act, 2021, related regulations and any subsequent legislation to provide our clients guidance in real time. Please visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take, and resources to help manage ongoing operations.

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